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IN THE

Supreme Court of the United States

AFRICAN METHODIST EPISCOPAL ZION CHURCH, *et al.*,
Petitioners,

v.

FROM THE HEART CHURCH MINISTRIES, INC., *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF OF *AMICI CURIAE* THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.; THE AFRICAN METHODIST EPISCOPAL CHURCH; THE AMERICAN JEWISH CONGRESS; THE CHRISTIAN METHODIST EPISCOPAL CHURCH; THE COMMUNITY OF CHRIST; THE EPISCOPAL CHURCH; THE ETHICS AND RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION; THE EVANGELICAL COVENANT CHURCH; THE FOUNDATION FOR THE PRESERVATION OF THE MAHAYANA TRADITION, INC.; THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH; THE INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL; CLIFTON KIRKPATRICK, GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.), IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICI CURIAE*[1]

Amici are a diverse group of religious organizations from a variety of religious traditions. Collectively, they have tens of millions of members and adherents across the United States, including in Maryland, meeting in tens of thousands of local houses of worship. The decision below abridges the right of religious organizations like *amici* to effectively own and control religious property. More profoundly, the decision below promotes division within religious organizations and virtually assures that Maryland's civil courts will directly adjudicate issues of religious doctrine, polity, and practice, in violation of the consistent pronouncements of this Court for over a century and in derogation of the right of religious organizations to govern their internal affairs. Individual statements of interest may be found in the appendix.

REASONS FOR GRANTING THE PETITION

This case is of great significance to numerous churches across the nation.[2] Narrowly, it is about the legal rules that govern the adjudication of church property disputes – a subject of vital importance to virtually every religious denomination. But more broadly, this case is about the fundamental right of churches to establish polities or forms of church governance that are in harmony with their respective theological understandings of religious authority. The rule established by the Maryland Court of Appeals directly subverts that right by injecting civil courts into the substance of intra-church disputes between denominations and disaffected congregations. It requires the trial court to examine and substantively interpret not only a denomination's polity but also the degree to which the local congregation has accepted that polity and whether, notwithstanding such acceptance, the denomination's course of ecclesiastical conduct has worked a waiver of the denomination's rights.

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1. Counsel for *amici* state that they authored this brief in whole and that no person or entity, other than *amici*, made a monetary contribution to the preparation or submission of this brief.

2. The term "churches" is used inclusively to denote religious institutions – be they strictly speaking churches, synagogues, mosques, ashrams, or ministries of any type.

Such an analysis will unavoidably entangle courts in doctrinal and ecclesiastical disputes. This level of scrutiny is in direct conflict with prior decisions of this Court protecting the autonomy of churches to define their own doctrines and polities and to establish internal rules for dealing with religious disagreements. The decision below gives Maryland's civil courts power to essentially disregard a denomination's theological understanding of the proper locus of ecclesiastical authority. Here, the court effectively ignored the hierarchical elements of the polity of Petitioner African Methodist Episcopal Zion Church ("AME Zion"), treating the church as if it were far more congregational than it actually is. The intrusive approach of the Maryland Court of Appeals will make civil courts an active force in shaping religious polities – a result that contravenes over a century of this Court's church autonomy jurisprudence. *Certiorari* is necessary to resolve the conflicts identified by the Petitioner and to ensure that fundamental religious choices about denominational governance are made by churches and not by civil courts.

ARGUMENT

Amici agree with Petitioner that this Court's immediate review is needed because the decision below squarely conflicts with decisions by the highest courts of other States. As a result of that conflict, these *amici*, most of whom are international or national denominations, are now subject to different and irreconcilable rules and standards depending on the State in which a dispute arises. For *amici*, this is an intolerable situation, and is reason enough for this Court to grant certiorari. However, *amici* also wish to bring to the Court's attention a few additional considerations that make this Court's immediate review all the more important.

I. The Decision Below Will Have a Tremendous Negative Impact on the Ability of Religious Denominations to Own and Control Their Own Property.

The ability of religious denominations to structure their property affairs in a stable and predictable manner is essential to their health and even survival. A denomination can literally be

dismembered by schismatic dissenters if it lacks the legal means to secure ownership and control of its own property. Predictable and consistent legal rules for adjudicating church property disputes are therefore critical. Moreover, this Court has long held that the First Amendment forbids civil courts from examining and interpreting religious doctrines, church polity, and ecclesiastical governance and practice – a limitation that significantly constrains how courts may adjudicate church property disputes.

The decision below will have a tremendous negative impact on the ability of religious denominations to own and control their own property. It will also inject civil courts into substantive ecclesiastical matters, in violation of the First Amendment.

1. In *Jones v. Wolf*, 443 U.S. 595 (1979), this Court allowed the States to "adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters. . . ." *Id.* at 602 (citation and quotation marks omitted). Specifically, this Court approved the "neutral principles of law" approach as one that (at least in theory) would not require the constitutionally forbidden inquiry into church doctrine or polity. *Id.* at 602-04. Moreover, the Court expressly stated that one way hierarchical churches could ensure that those loyal to the denomination retain control over church property is by inserting, "before the dispute erupts," express "trust" clauses in their constitutions providing that local church property is held in trust for the entire denomination. *Id.* at 606. This Court assured churches that "the civil courts will be bound to give effect to the result indicated" by such clauses. *Id.*

Unfortunately, the various neutral principles approaches adopted by the States have spawned numerous problems and have frequently resulted in civil courts taking sides in religious disputes even as they proclaim their neutrality. It is important in this regard to remember that *Jones v. Wolf* was decided 5-4, and that Justice Powell's dissent predicted many of these problems. Justice Powell argued that as a practical matter the neutral principles standard would lead to civil courts overturning religious decisions and religious self-understandings. *Id.* at 611

614 (Powell, J., dissenting). The dissenters thought the only safeguard for religious liberty was for civil courts to defer to the decision of the highest church authority recognized by both sides before the dispute arose. *Id.* at 614.

The majority emphatically responded that Justice Powell's fears were misplaced and that, to the contrary, the neutral principles approach would guard against civil court intrusions into matters of religious doctrine, practice, and polity. *See id.* at 604-606. This was the context of this Court's assurance that denominations could provide for control of property in a trust clause in their denominational constitution, or by other clearly stated means. *See id.* at 606. Rather than a minor detail of the opinion, the Court advanced the trust-clause approach as an important safeguard for religious self-determination. Denominations could control their own polity (including property) either under a traditional regime of deference to the decision of the highest church authority, as the dissent advocated, or by writing in advance of any dispute a clear rule that would be enforced under neutral principles.

Many denominations feared at the time of *Jones v. Wolf* that even Justice Powell had understated the danger – that "neutral principles" would become a license for civil courts to inject themselves into religious disputes and to impose their own notions of a proper polity. These fears are coming to fruition in the state courts, and this Court's solemn guarantee of religious self-determination in *Jones* often goes for naught. Courts generally understand, and defer to, unambiguously hierarchical polities.[3] But there is an observable tendency in the decisions – one that was clearly on display in this case – to congregationalize connectional and presbyterial polities. Courts have generally not understood the combination of hierarchical

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3. *See, e.g., Kleppinger v. Anglican Catholic Church*, 715 A.2d 1033 (N.J. Super, 1998); *Fortin v. Roman Catholic Bishop of Worcester*, 416 Mass. 781 (1994); *Maciejewski v. Breitenbeck*, 413 N.W.2d 65 (Mich. App. 1987); *Struemph v. McAuliffe*, 661 S.W.2d 559 (Mo. App. 1983); *Parent v. Roman Catholic Bishop of Portland*, 436 A.2d 888 (Me. 1981); *Galish v. Catholic Bishop of Chicago*, 75 Ill. App. 3d 538 (1979).

and congregational elements in such polities and so tend to treat them as congregational for purposes of property disputes. This is no doubt encouraged by the view that congregational polities better fit American values of democracy and local control. As a result, since *Jones*, under the guise of neutral principles, courts have disproportionately sided with congregations in disputes with connectional and presbyterial denominations.[4]

2. Relying on this Court's assurance in *Jones v. Wolf*, numerous denominations, including many of these *amici*, have come to depend on trust clauses to protect their property rights. *See* Petition at 15 n.2 (listing denominations). As explained in the Petition, the *Book of Discipline* of AME Zion contains such a trust clause. When one of AME Zion's local congregations and its pastor decided to leave the denomination, there should have been no doubt that the congregation's property remained with AME Zion. Nevertheless, the court below concluded that the First Amendment precludes a civil court from relying on the very type of trust clause this Court expressly endorsed in *Jones*. The court held that the trial court must instead conduct a detailed and invasive inquiry into the facts and circumstances of the relationship between AME Zion and its local congregation to determine whether the local congregation specifically consented to the trust provisions in the *Book of Discipline* and whether AME Zion at some time waived its trust rights. Pet. App. 31a, 34a. In so doing, the court treated AME Zion's connectional polity as effectively congregational. This was error not only as to property rights, but as to fundamental religious choices about denominational governance.

This decision is potentially disastrous for the many denominations with local congregations in Maryland, including many of these *amici*, whose valuable and sometimes historic properties are secured to the denomination via similar trust

4. *See, e.g., Presbytery of Beaver-Butler of United Presbyterian Church v. Middlesex Presbyterian Church*, 507 Pa. 255, 489 A.2d 1317 (1985); *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465 (Mo. 1984); *Bjorkman v. Protestant Episcopal Church in the United States of America*, 759 S.W.2d 583 (Ky. 1988).

clauses. It will create intolerable uncertainty and spawn legal disputes regarding ownership of religious property. If, contrary to this Court's express teaching in *Jones*, trust clauses can no longer be relied on as the last word, the legal status of many hundreds of religious properties in Maryland will now be subject to challenge and revision. The ability to leave with church property is often the key factor in whether a disgruntled congregation or minister remains affiliated with the denomination. The decision below, with its highly subjective inquiry into consent and waiver, holds open the prospect that ultimate control of numerous properties that have long been presumed to be held in trust for the denomination might in fact be subject to challenge. This is an open invitation for unending legal disputes over church property. The decision will foster division within religious organizations rather than ensuring a position of government neutrality in religious disputes. In brief, if writing a clear rule in a trust clause does not suffice to secure a denomination's property, and if every church property dispute must be litigated under the evolving secular doctrines of consent and waiver, then the guarantee in *Jones* of religious liberty has been betrayed, and no church can be assured of control of its own polity in any case involving property.

Further, the decision below will require an invasive civil court examination of a denomination's religious doctrines, the structure and governance of its polity, and the ecclesiastical practices and private communications of its clergy. All aspects of a church's ecclesiastical relationships will now be fair game at trial. As explained at length below, such intrusions are absolutely forbidden by the First Amendment. This Court has never permitted the sort of inquisition into internal religious matters that the Maryland Court of Appeals has now mandated.

3. A specific example illustrates some of the problems created by the decision below. *Amicus* African Methodist Episcopal Church ("AME") has a connectional polity that is substantially similar to that of Petitioner AME Zion. As with AME Zion, AME's *Discipline* contains a trust clause providing that local church property is held in trust for the denomination

as a whole. *Doctrine and Discipline of the African Methodist Episcopal Church* 57 (2000).

Bishops have significant (though certainly not exclusive) authority within AME's polity, including the authority to make changes in the assignments of local pastors (*id.* at 143), and indeed pastors are frequently assigned to new congregations. Sometimes, however, a pastor becomes so popular that local parishioners (perhaps at the behest of the pastor) reject the authority of the bishop and threaten to assert ownership and control over local AME property and start a new church if their pastor is transferred.

Given *Jones* and AME's trust clause, there should be no question that in such a situation AME would retain control over its property. To hold otherwise would dramatically alter AME's polity, transferring ecclesiastical authority away from the bishops and the governing bodies of the denomination and giving it to local congregations and pastors. Under *Jones*, that outcome appeared to be totally foreclosed. But the Maryland Court of Appeals has rejected any sort of firm reliance on trust clauses in church constitutions and instead requires a case-specific inquiry into the specific religious facts of the situation. The uncertainty such a rule creates could well trigger a chain reaction of defections within AME that causes tremendous damage to the denomination. Indeed, AME lost a local church in Maryland precisely because of Maryland's refusal to recognize AME's trust clause, notwithstanding that the local church had been expressly affiliated with the denomination for more than a century. *See Mt. Olive African Methodist Episcopal Church of Fruitland, Inc. v. Board of Incorporators of the A.M.E. Church Inc.*, 703 A.2d 194 (Md. 1997).

II. The Decision Below Conflicts With Long-Established Decisions of this Court Precluding Intrusive Civil Court Inquiries Into Matters of Church Doctrine, Polity, and Practice.

For all religious traditions, the governance of religious organizations and the allocation of religious authority therein lie at the heart of the free exercise of religion. For example,

the nature and locus of religious authority is one of the fundamental disagreements among Christian denominations. It was central to the Reformation. The Roman Catholic Church is organized hierarchically, with authority at any given time flowing down from the Pope, and over time flowing through the claim of direct apostolic succession from Jesus and his appointment of Peter to lead the church. VERGILIUS FERM, AN ENCYCLOPEDIA OF RELIGION 667 (1945). Luther rejected the authority of the Pope and Calvin went much further and rejected the office of bishops. *Id.* at 456-457; 114. The Church of England retained bishops claiming apostolic succession, and the Puritan and Presbyterian dissenters, following Calvin, rejected those bishops. *Id.* at 197-173; 628-629; 605-606. This disagreement was one of the central issues in the English Civil War. "No bishop, no king" was a slogan of the Anglican royalists, who claimed that the rejection of bishops would lead to rejection of monarchy. That turned out to be correct for as long as Puritans ran the country. THOMAS J. CURRY, THE FIRST FREEDOMS: CHURCH AND STATE IN AMERICA TO THE PASSAGE OF THE FIRST AMENDMENT 1-2 (1986); *see generally* THE BEGINNINGS OF ENGLISH PROTESTANTISM (Peter Marshall and Alec Ryrie, eds., 2002).

This memory ran strong in the time of the American founders. Hostility to bishops was a feature of late eighteenth century American religion, and disagreements over church polity were salient to those who wrote American guarantees of religious liberty. CURRY, *supra*, at 126-129; *see generally* JOHN EIDSMOE, THE FAITH OF OUR FOUNDING FATHERS (1987). These disagreements over church polity were a fundamental issue as Protestantism evolved and divided. Disagreements over governance were driven by theological disagreements – about the apostolic succession, about the authority of scripture, about the authority of individual interpretation of scripture, and other issues. They are not mere bureaucratic formalities without religious significance.

Today, church polities cover a continuum of arrangements, from purely hierarchical on one end to purely congregational on the other. Roman Catholics remain unambiguously hierarchical. FERM, *supra*, at 667. Baptists, on the other hand, are extremely congregational: each congregation is entirely independent, and no Baptist convention has any authority over any Baptist congregation. *Id.* at 54-56; THE STRUCTURE OF AMERICAN CHURCHES: AN INQUIRY INTO THE IMPACT OF LEGAL STRUCTURES ON RELIGIOUS FREEDOM 20-21 (James A. Serritella, ed., forthcoming 2003) (manuscript on file with the Center for Church/State Studies, DePaul University College of Law).

Somewhere in between are a range of polities known as presbyterial or connectional. These polities combine elements of hierarchy and congregationalism. Some of them have elected hierarchies, in which authority flows up from congregations and individual believers. Some of them have retained bishops but added elected conferences. In some denominations, clergy are appointed by the bishops; in some by elected bodies; in some by individual congregations. So too with church property: in some church property is controlled by individual congregations; in some by elected bodies at the denominational level; in some by bishops. *See* Serritella, *supra* at 21.

Regardless of the religion, a denomination's right to choose among differing polities is a fundamental feature of religious liberty. Each denomination is entitled to legal respect for the governing structure that it believes God has ordained or that will best serve its religious interests. For a secular court to rearrange a church's polity, advertently or inadvertently, is to interfere with a fundamental religious choice.

Petitioner AME Zion Church has a connectional polity with substantial authority at the denominational level, divided between a bishop and annual and general conferences, and some authority at the congregational level. Of greatest relevance here, church property is held in trust for the denomination by the unambiguous terms of the church's constitution. When the Maryland court undertakes to review all this and apply its own subjective standards of congregational consent and

denominational waiver, it is rearranging the AME Zion polity to its own preferences. It is making AME Zion more congregational than its own polity provides. As this Court has consistently held for more than 130 years, civil courts have no authority or competence to make such determinations, and the First Amendment forbids them from adopting approaches to church property disputes that require them to do so.

1. This Court's decisions have long "radiate[ed] . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation – in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871)). "[R]eligious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions.'" *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327, 341 (1987) (Brennan, J., concurring).

Perhaps the earliest of this Court's church autonomy decisions is *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), which involved a dispute between two factions of the Presbyterian Church of the United States for control of a local church building. *Id.* at 691-94. Much as here, the dispute centered on which faction had the correct understanding of church doctrine and governance. Consistent with English precedent, the trial court entertained the action and issued a ruling after examining relevant religious doctrines and the church's polity and practices. On appeal, this Court dismissed the entire matter for lack of subject matter jurisdiction. Rather than become entangled in an internal church matter, this Court affirmed the exclusive jurisdiction of the church's highest governing body to adjudicate such issues according to the church's own doctrines, rules, and customs. *Id.* at 727. This Court reasoned:

> The right to organize voluntary religious associations to assist in the expression and dissemination of any

> religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general associations, is unquestioned. *All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed.*

Id. at 728-29 (emphasis added). The lack of technical competence of civil courts to pass on issues of church doctrine and governance was another key basis for the decision. *See id.* at 729.

With the same concern for church autonomy, this Court in *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), struck down a statute that entangled the government in the ecclesiastical affairs of the Russian Orthodox Church. *Id.* at 106-07. Relying on *Watson*, the Court held that state intrusion into church governance violates the First Amendment. "Legislation that regulates church administration, the operation of the churches, [or] the appointment of clergy . . . prohibits the free exercise of religion." *Id.* at 107-08. This holding was later extended to include intrusions by courts through litigation. *See Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960). Issues of church governance are "strictly a matter of ecclesiastical government" and thus of no concern to the state. *Kedroff*, 344 U.S. at 115. State intrusion into the ecclesiastical affairs of a church "violates [the] rule of separation between church and state" (*id.* at 110) and contravenes "the philosophy of ecclesiastical control of church administration and polity." *Id.* at 117.

Likewise, in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), this Court held that the rule of judicial non-interference "applies . . . to church disputes over church polity and church administration." *Id.* at 710. The Court

reiterated that under the First Amendment "'civil courts exercise no jurisdiction'" over "'a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.'" *Id.* at 713-14 (quoting *Watson*, 80 U.S. (13 Wall.) at 733-34). Disgruntled ministers or congregations cannot invoke the power of civil courts to overturn a denomination's ecclesiastical decisions. *Id.* at 714-15. "In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government. . . ." *Id.* at 724.

This Court has been particularly vigilant in ensuring that civil courts do not become involved in the interpretation of religious doctrines, an issue that often arises in church property disputes like the one here. Thus, in *Presbyterian Church v. Mary Elizabeth Blue Hull Church*, 393 U.S. 440 (1969), this Court overturned Georgia's "departure-from-doctrine" test for resolving church property disputes because it required an inquiry into religious doctrines and practices. This Court held that civil courts have no authority to "engage in the forbidden process of interpreting and weighing church doctrine." *Id.* at 451. Indeed, such a process "can play *no* role in any . . . judicial proceedings" because it unconstitutionally "inject[s] the civil courts into substantive ecclesiastical matters." *Id.* at 450-51.

Accordingly, "a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters." *Jones*, 443 U.S. at 602 (citation and quotation marks omitted). Nor can a court base its decision on its own interpretation of a church's religious "practice" or governance. *Id.* The First Amendment precludes courts from engaging in "an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes." *Id.* at 605.

It is important to underscore that the very process by which a civil court would investigate and adjudicate disputed claims about church doctrine and polity is unconstitutional. In *N.L.R.B.*

v. Catholic Bishop of Chicago, 440 U.S. 490 (1979), the National Labor Relations Board sought to apply principles of labor law to Catholic high schools. *Id.* at 491-93. This Court squarely rejected the attempt. Noting that many of the "challenged actions [of the schools] were mandated by their religious creeds" (*id.* at 502), the Court interpreted the National Labor Relations Act narrowly so as to preclude the Board from even inquiring into the internal management of the religious schools. *Id.* at 507. This Court reasoned that "[i]t is not only the conclusions that may be reached by the Board [in adjudicating the claims] which may impinge on rights guaranteed by the Religion Clauses, but also *the very process of inquiry* leading to findings and conclusions." *Id.* at 502 (emphasis added). The identical threat appears in church property disputes, which (as illustrated here) virtually always center around disagreements over religious doctrine and polity.

In sum, this Court's prior decisions have firmly established that the First Amendment forbids civil courts from adjudicating church property disputes by delving into a church's doctrines, polity, practices, or governance. Church property disputes may be resolved by application of the "neutral principles" approach, in which the court "relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges," *Jones*, 443 U.S. at 603, with the caveat that "general principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues." *Md. & Va. Eldership of the Churches of God v. Church of God*, 396 U.S. 367, 370 (1970) (Brennan, J., concurring). Or, courts may employ the "polity" or "deference" approach, *id.* at 368-69, where the reviewing court defers to the highest decision-making body of a hierarchical denomination or, in a congregational denomination, to the local congregation's decisionmaking process. *See Watson*, 80 U.S. (13 Wall.) at 724-27; *see, e.g.*, *Fonken v. Cmty. Church*, 339 N.W.2d 810 (Iowa 1983) (applying polity approach). But regardless of the approach, courts may never engage in an analysis or examination of

ecclesiastical polity, governance, or doctrine in resolving church property disputes. *Jones*, 443 U.S. at 605.

2. Despite this Court's unequivocal pronouncements, the decision below will unavoidably immerse Maryland's civil courts in the examination and interpretation of religious doctrine and ecclesiastical practice. As detailed in the Petition, the court below rejected a straightforward application of the "neutral principles" approach. Under that approach, the court's inquiry would have been limited to ascertaining whether Full Gospel AME Zion Church was in fact a local congregation of AME Zion and whether AME Zion's *Book of Discipline* requires all local congregations to hold church property in trust for the entire AME Zion denomination. *Jones*, 443 U.S. at 606 ("[T]he constitution of the general [hierarchical] church can be made to recite an express trust in favor of the denominational church. . . . And the civil courts will be bound to give effect to the result indicated by the parties. . . ."). Instead, the court mandated a detailed inquiry into the nature and history of the ecclesiastical and pastoral relationship between the denomination and its local congregation to determine whether the congregation had specifically "consented" to the trust provisions of the *Book of Discipline* and whether, in any event, AME Zion had engaged in a course of ecclesiastical conduct that waived its trust rights. Pet. App. 33a-38. Such an invasive investigation is flatly prohibited under this Court's decisions.

Moreover, as this Court recognized long ago, civil courts have no competence to resolve such disputes. *Watson*, 80 U.S. (13 Wall.) at 729. Judges are not – and in their official capacities must not act as – theologians or experts in ecclesiology, and it is dangerous indeed for them to try. In a church property dispute between a denomination and a local congregation, judges have no competence (much less the legal tools) to distinguish between an actual waiver of the denomination's trust rights in local property and, say, Christian patience and long-suffering with a recalcitrant minister and congregation. Is a denomination's toleration of unorthodox practices truly evidence that the local

congregation enjoys a uniquely autonomous position within the polity, with special rights over local church property? What weight does a court give to the decision of denominational leaders to pray for divine intervention and hope that time will bring back a schismatic pastor to a full unity of the faith? Civil courts are institutionally incompetent to answer these and numerous other questions that will inevitably arise under Maryland's totality-of-the-circumstances approach.

3. Worse, Maryland's approach to church property disputes will make the courts a significant force in the development of religious doctrine, polity, and practice. If civil courts are free to construe, for instance, patience and forgiveness as a basis for stripping a denomination of local church property, denominations might feel compelled to alter or compromise key doctrines or practices so as to protect their legal rights. Pressure will mount to make the polity less congregational and more hierarchical, or to centralize property ownership. Strong incentives would be created for a denomination to define standards of ecclesiastical practice and governance with great specificity and to strictly enforce them. Denominations that seek to accommodate diversity with a more flexible doctrinal and ecclesiastical approach might be compelled to enforce greater orthodoxy. As explained, the analysis required by the court below encourages schism and intra-denominational conflict, and (if widely adopted) might well portend the dissolution of some denominations.

* * * * *

The Maryland Court of Appeals has adopted an approach to church property disputes that requires civil courts to enmesh themselves in the interpretation of religious doctrine, polity, and ecclesiastical practice. For over 130 years, this Court's decisions have uniformly rejected such an intrusion into religious affairs as a violation of the separation of church and state. The decision below not only conflicts with those decisions but also sets a dangerous precedent that is sure to promote religious conflict.

III. This Court's Review is Necessary to Resolve the Doctrinal Confusion About the Meaning of "Neutrality" in the Context of Church Property Disputes.

Beyond resolving the conflicts described in the Petition, this Court's review is needed to resolve confusion in the lower courts about the proper meaning of "neutrality" in disputes over church property – a confusion that allowed the court below to adopt a decidedly non-neutral approach under the guise of "neutral principles."

1. Since *Jones* was decided more than 20 years ago, this Court repeatedly has considered principles of neutrality in a variety of First Amendment contexts. *E.g.*, *Zelman v. Simmons-Harris*, 122 S. Ct. 2460, 2467 (2002) (neutral funding program); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 111-12 (2001) (non-neutral access to school facilities); *Rosenberger v. Rector & Visitors*, 515 U.S. 819, 830-33 (1995) (non-neutral funding program). Yet, in the area of church property disputes, the neutral principles doctrine has gone untouched since 1979.

Although the Court has never fully explicated the meaning of the phrase "neutral principles," this Court's prior decisions suggest that this approach embodies a requirement of evenhanded application of a State's "objective, well-established concepts of trust and property law." *Jones*, 443 U.S. at 603; *see also Md. & Va. Eldership*, 396 U.S. at 368-70 (Brennan, J., concurring). Thus, under that approach, a court should apply to a religious institution the same secular rules that are "developed for use in all property disputes." *Blue Hull*, 393 U.S. at 449; *see Atkins v. Walker*, 200 S.E.2d 641, 650 (N.C. 1973) ("these questions must be resolved on the basis of principles of law equally applicable to the use of properties of an unincorporated athletic or social club").

2. Here, however, the Maryland Court of Appeals seems to have equated "neutral principles" with "secular principles." As a result, it adopted a special rule for churches that, although secular in form, is both different from, and more onerous than, the rule it applies to all other voluntary organizations.

The general rule in Maryland – the *neutral* rule – is that "one who becomes a member of an association is deemed to have known and assented to its bylaws, and cannot be heard to object to the enforcement thereof." 6 Am. Jur. 2d *Ass'ns and Clubs* § 5 (1999); *Donnelly v. Sup. Council, Cath. Benevolent Legion*, 67 A. 276, 278 (Md. 1907).[5] Under this doctrine of consent-by-affiliation, "'the constitution and by-laws of a voluntary association become a part of the contract entered into by a member who joins the association.'" *NAACP v. Golding*, 679 A.2d 554, 560 n.10 (Md. 1996) (citation omitted).[6] Inexplicably, however, the Maryland court declined to apply the doctrine of consent-by-affiliation. Indeed, it failed even to address it, other than to mention that the Church had made this argument. Pet. App. 19a-20a.

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5. This same principle has long been recognized and applied in the context of religious institutions. As noted above, this Court in *Watson* stated that "[a]ll who unite themselves to [a voluntary religious association] do so with an implied consent to [its] government, and are bound to submit to it." 80 U.S. (13 Wall.) at 729. This critical passage, which "has a clear constitutional ring," *Blue Hull*, 393 U.S. at 446, has been repeated throughout this Court's church property decisions. *E.g.*, *Serbian*, 426 U.S. at 711; *Blue Hull*, 393 U.S. at 446; *Kedroff*, 344 U.S. at 114.

6. *Accord Martin v. United Slate, Tile & Composition Roofers*, 77 A.2d 136, 141 (Md. 1950) ("[t]he constitution of an unincorporated association is ¼ a contract between the members"); *Most Worshipful United Grand Lodge v. Lee*, 96 A. 872, 875 (Md. 1916) (a member of an association "has no ground of complaint" when an association enforces its own rules, for the association "is but carrying into effect the agreement he made when he became a member of the association"); *Anacosta Tribe, No. 12 v. Murbach*, 13 Md. 91 (1859). Here, moreover, it is undisputed that Pastor Cherry and the other members of From the Heart actually consented to the Book of Discipline. The ceremony for admitting members to the Church requires the "cheerful[]" acceptance of the Church's rules, Pet. App. 60a (¶ 656), and the ceremony for admission to the pastorate likewise requires the applicant to acknowledge having studied the Church Discipline, and to pledge to preach and maintain it, *id.* at 51a (¶ 213.11-12).

Instead of applying this neutral principle – which would permit the Church, like any other organization, to maintain control over its property simply by inserting an appropriate provision in its constitution, to which members would be deemed to have consented – the court created a unique burden for religious denominations. Henceforth, a denomination can maintain control over church property *only* through one of the following three methods: (1) The denomination may require trust or reverter clauses in the deeds to the property of the local churches. (2) It may include trust or reverter language in its constitution (or some other authoritative source), but for such language to be enforceable: (a) the denomination must also prove that the local church "consented" to the property provisions (by some act other than affiliating with the denomination); and (b) the denomination must rebut any argument that it has somehow waived its rights by "inadequately" enforcing its own rules. (3) It may obtain from the state legislature a special statute imposing a trust in the denomination's favor, or providing for the automatic reverter of local church property to the denomination if the local church withdraws. Pet. App. 16a n.17, 37a-38a.

These options, which amplify the so-called "*Eldership* options" first articulated by the Maryland Court of Appeals in 1968, Pet. App. 16a n.17 (*quoting Maryland & Virginia Eldership of the Church of God v. Church of God*, 241 A.2d 691, 699 (Md. 1968), *vacated and remanded*, 393 U.S. 528 (1969), *reaff'd*, 254 A.2d 162 (Md. 1969), *appeal dismissed*, 396 U.S. 367 (1970)), are decidedly not neutral. The first option denies application of the consent-by-affiliation principle to churches. As a result, religious denominations – whose thousands of congregations have frequently acquired multiple parcels of land over the course of decades, if not centuries – bear the onerous burden of ensuring that each congregation inserts a trust or reverter clause into each property deed. Such a requirement is not a neutral principle

of law, but rather a unique and discriminatory burden on the ability of religious associations to enforce their rules against their own members.

The second option, employed by the court below, is also unconstitutional in application because, as explained above, it is burdened by invasive inquiries into waiver and consent that require the court to interpret religious doctrine, polity, and governance. Moreover, as construed by the court below, this option is decidedly non-neutral because it ignores the consent-by-affiliation principle that protects the institutional integrity of similarly situated secular associations.

Option three is even more problematic. To fall within this option, if a denomination wishes to avoid the heavy burdens of option one, or the invasive and unconstitutional inquiry into consent and waiver required by option two, it must seek a special statute on its behalf from the legislature. And if the denomination wishes to change its policy regarding church property, it must again seek special legislative consideration. This is a unique burden that falls exclusively on religious organizations.

3. Perhaps worse, option three is not even neutral as *among* religions because it favors denominations with political clout while leaving others unprotected. This discrimination is not merely theoretical. To take just one example, as the decision below explained, the Maryland Code specifically protects the United Methodist Church ("UMC"). Md. Code Ann., Corps. & Ass'ns §§ 5-321 to 5-328. In terms virtually identical to the trust clause in AME Zion's *Book of Discipline*, that statute provides that all property held by United Methodist congregations in Maryland is held in trust for the denomination, and that the failure to insert the appropriate trust clause in a property deed does nothing to change this fact. Compare *id.* §§ 5-326, -327 with Pet. App. 54a-55a (¶¶ 494, 495.2). The Maryland Court of Appeals has previously stated that those provisions are adequate to protect the UMC's interest in local church property. *Md. & Va.*

Eldership of the Church of God v. Church of God, 254 A.2d 162, 167 (Md. 1969); 241 A.2d 691, 699 (Md. 1968). Accordingly, if this same dispute had arisen in the United Methodist Church, rather than in the AME Zion Church, the Maryland Code would have been dispositive and the Court of Appeals would simply have affirmed the trial court's decision without the need for the invasive inquiry contemplated by the Court of Appeals.[7]

* * * * *

Based on the experience of these *amici*, the decision below will create tremendous uncertainty and spawn numerous legal disputes over the ownership of religious property, encouraging division within religious denominations. By ignoring the consistent pronouncements of this Court for more than a century, it will also require civil courts to engage in an unconstitutional inquiry into the nuances of church doctrine, polity, and practice. Moreover, the decision below invites state rules and statutes that violate not only the neutrality that should exist between secular and religious institutions, but also the neutrality that the First Amendment mandates among religious denominations.

CONCLUSION

The petition for a writ of certiorari should be granted.

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7. Of course, the failure of Maryland law is not that it appropriately recognizes UMC's property rights but that it fails to recognize the rights of other similarly situated denominations that do not have the benefit of a special statutory enactment. Moreover, this argument does not suggest that states are per se barred from enacting on an ad hoc basis special legislative provisions addressing the property needs of particular churches, so long as such enactments are provided in a nondiscriminatory and substantively fair manner.

Respectfully submitted,

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APPENDIX

APPENDIX — INTEREST OF THE *AMICI CURIAE*

The National Council of the Churches of Christ in the U.S.A. ("NCC") is the principal ecumenical organization in the United States through which 36 Protestant, Orthodox and Anglican member communions (denominations) with a combined membership of more than 50 million Christians in nearly 140,000 congregations nationwide join in a common witness through ministries of faith, justice, education and public witness. The Council has regularly provided leadership in matters of religious liberty and participated as *amicus curiae* in litigation in courts throughout the United States. The NCC supports the freedom of each church to define, for itself, its own style of organization. Petitioner African Methodist Episcopal Zion Church is one of the member communions of the National Council of Churches. Like the African Methodist Episcopal Zion Church, the majority of our member communions are connectional churches that would be severely impacted in their ability to own and control property if the present decision stands.

The African Methodist Episcopal Church ("AME Church") was established in 1787. It has 4,127 individual churches worldwide, with 1.2 million congregants, including 118 individual churches and 71,500 congregants in the state of Maryland. It is a connectional church, and has a provision in its Doctrine and Discipline which requires all of its churches to provide in their deeds that church property is held in trust for the AME Church national denomination. This provision was inserted in 1984. Because of the laws of the states in which is operates, the AME Church feels strongly that connectional churches cannot unilaterally withdraw from their connection with the denomination.

The American Jewish Congress is an organization of American Jews founded in 1918 to protect the civil, political and religious liberties of American Jews and all Americans. It has taken a special interest in religious liberty issues, and

has insisted in a wide variety of contexts that government should not meddle in the internal affairs of religious institutions. Since the Maryland courts seem to have done just that, it joins this brief.

The Christian Methodist Episcopal Church ("CME Church") was originally a part of the Methodist Episcopal Church in America, forming its own denomination in 1870. Organized by former slaves, the CME Church follows the Methodist tradition, with a hierarchical polity headed by bishops in 10 Episcopal Districts. The CME Church takes pride in the spirit of inclusiveness, general Superintendency of its Episcopacy, its systems of "Conferences," the checks and balances, and the significant role of the laity.

The Community of Christ, formerly known as the Reorganized Church of Jesus Christ of Latter Day Saints (RLDS Church), is an International Christian Religious Society with headquarters in Independence, Missouri and membership in every state and over 40 nations. The mission of the Community of Christ is to proclaim Jesus Christ and promote communities of hope, love, peace and joy. The Community of Christ is committed to the pursuit of peace and justice. The Community of Christ follows doctrines based upon the teachings of Jesus Christ, and its organization follows patterns of the New Testament Church. Its book of Rules and Resolution sets forth the polity and the governing rules or procedures for the Community of Christ. All are approved by the Community of Christ's highest legislative body, the World Conference, consisting of elected delegates from among the membership, which meets in legislative session every two years at the Community of Christ world headquarters building in Independence, Missouri. The Community of Christ has an interest in this case because it raises important questions impacting hierarchical religious institutions and their ownership and control of local congregational premises.

Appendix

The Episcopal Church is a hierarchical or connectional religious denomination. The Church is governed by a General Convention, which is chaired by the Church's Presiding Bishop, the Most Rev. Frank Tracy Griswold, III, who joins in this brief in support of the petition, and by a Constitution and bylaws or "canons." The Church is comprised of some 110 geographical "dioceses," each of which is governed by a Convention, Constitution, and canons of its own. Each diocese is in turn comprised of local worshiping congregations, generally called "parishes" or "missions." Each of the Church's dioceses, parishes, and missions are bound by the actions of the General Convention and by the Church's Constitution and canons. The canons of the Episcopal Church contain a broad array of provisions governing numerous practices and procedures of local congregations, including provisions governing the use and disposition of property. In particular, Canon I.7(4) of the Episcopal Church provides in pertinent part: "All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. . . ." The Episcopal Church thus has a strong interest in seeking review in this Court of a state court opinion that did not give effect to a similar trust provision in the governing documents of the denomination there involved. The General Convention of the Episcopal Church adopted Canon I.7(4) in 1979, in the wake of this Court's decision in *Jones v. Wolf*, precisely to ensure that the Church's existing, historic trust interest in property held by its constituent parishes and dedicated to the Church's religious purposes would be preserved in states that might now apply "neutral principles" of law to property disputes involving hierarchical churches.

The Ethics and Religious Liberty Commission of the Southern Baptist Convention is the ethics, moral concerns, and religious liberty agency for the Southern Baptist

Convention, the nation's largest non-Catholic denomination, with sixteen million members in over 42,000 autonomous local churches. The Commission is charged with addressing issues of religious liberty both domestically and abroad. The First Amendment implications of this case for the free exercise of religion without government interference raise serious concerns.

The Evangelical Covenant Church is a denomination of evangelical Christian churches with congregations throughout the United States. It has 714 churches in eleven regions with an average attendance of 132,000. It grants clergy credentials to 1877 ministers. It has an interest in a religious denomination's use of its real property in the conduct of its ministry.

The Foundation for the Preservation of the Mahayana Tradition ("FPMT") is an international network of Tibetan Buddhist organizations in the Gelugpa tradition. Led by its Spiritual Director Lama Thubten Zopa Rinpoche, the Foundation for the Preservation of the Mahayana Tradition, Inc. is a central entity that coordinates certain activities of FPMT's many affiliates in the United States and abroad. There are at present approximately 130 centers worldwide affiliated with FPMT, 13 of which are in the United States. These include centers for Buddhist studies, retreat centers, monasteries and nunneries, hospices, elementary schools, and more.

The General Council on Finance and Administration ("GCFA") is the finance and administrative arm of The United Methodist Church. The United Methodist Church is a worldwide religious denomination with approximately 9 million members in the United States; it has approximately 36,000 local churches and 44,000 pastors in the United States. GCFA is charged under United Methodist polity with

protecting the legal interests of the denomination and files this brief in carrying out that responsibility. Only the United Methodist Church's legislative body, the General Conference, has authority to set policy and speak for the entire denomination.

The International Church of the Foursquare Gospel, ("ICFG") a California nonprofit corporation, was established in 1927 to propagate and disseminate the principles embraced in the Foursquare Gospel. The ICFG operates Foursquare Gospel churches in the United States, including the State of Maryland, and around the world. As of the year 2001, there were 1,793 Foursquare churches in the U.S. having 242,616 adherents and over 3 million adherents worldwide attending some 28,000 Foursquare churches. The Bylaws of the ICFG require that title to all real property of Foursquare Churches be vested in the name of ICFG. That is the denomination's means of ensuring that a minister or congregation choosing to disassociate from the Foursquare denomination cannot also take property which has been purchased, often at great sacrifice, by adherents loyal to the Foursquare family. Historically, the present requirement that the ICFG hold title to property has not always been employed. And presently, in response to other concerns, the denomination is again considering other models of holding title to local church properties. The present case, if permitted to stand, injects much uncertainty into these deliberations as to ICFG properties in Maryland. Moreover, because this court is a court of some influence, ICFG is concerned that an unfortunate decision in this matter will confuse and generate controversy in other sister states as well.

Clifton Kirkpatrick, as the Stated Clerk of the Presbyterian Church (U.S.A.), joins this brief on behalf of the General Assembly of the Presbyterian Church (U.S.A.). If courts are not willing to enforce the denomination's ecclesiastical constitutional provisions regarding retention of local church

property, the Presbyterian Church, and other hierarchical churches risk losing to breakaway congregations real and personal property contributed by generations of members to promote the faith and whole church. The General Assembly has long advocated that the civil courts should honor the First Amendment's Establishment Clause, especially when attempting to resolve church property disputes.